

[Click Here To View Order](#)[to list of Petitions](#)

TP(R)-4/01-02 OF ALL BENGAL ELECTRICITY CON. ASSO.

 PRAYER**REVIEW JURISDICTION****BEFORE THE HON'BLE CHAIRMAN****WEST BENGAL ELECTRICITY REGULATORY COMMISSION( Conduct and Business )****Constituted Under Notification No. 1****W B E R C dated February 03, 2000.****In the matter of :-**

REVIEW from the order passed by the Hon'ble Commission on the 7 th November, 2001 Fixing the tariff in respect of CESC Ltd. For the period 2000-2001 and 2001-2002.

**- A N D -****IN THE MATTER OF :-**

SRI SANJIT BISWAS

GENERAL SECRETARY,

ALL BENGAL ELECTRICITY CONSUMERS' ASSOCIATION

REGISTERED UNDER WEST BENGAL SOCIETIES REGISTRATION ACT,

REGISTRATION No. S/ 71702 of 1992-93having its Registered Office at

27A, DHIREN DHAR SARANI, P.S. MUCHIPARA, KOLKATA 700 012.

.... Applicant / objector

**- A N D -**

**IN THE MATTER OF :-** An application Under Section 12 read with Sector 23 of the ELECTRICITY REGULATORY COMMISSION ACT, 1998 read with order 47 Rule 1 of C.P. Code.

**- A N D -**

**IN THE MATTER OF :-** Indian Electricity Act, 1910, Indian Electricity (Supply) Act, 1948 and Electricity Rule 1956;

That the objector above named being aggrieved by and dissatisfied with the ORDER dated 7 th November 2001 passed by the Hon'ble W. B. ELECTRICITY REGULATORY COMMISSION in connection with TARIFF REVISION of C E S C Ltd. For the year 2000-2001 and 2001-2002, filed this application for Review under section 12, read with Section 23 of the ELECTRICITY REGULATORY COMMISSION' ACT 1998 and order 47 Rule 1 of the code of Civil Procedure 1908, begs to prefer this Review application before the Hon'ble Chairman W B E R C on the following amongst other ;

**G R O U N D S**

**1.** That the tariff structure (ch. 16) for 2001-02 in respect of LT Domestic, LT commercial and LT Industrial are hike of price of Electricity to the range of 10 to 15 percent in respect of small traders industrial units and poor domestic consumers while the price hike is practically Nil and negative in respect of big and bulk consumers. This is due to the outlook of the commission to abolish cross subsidy, step by step and determination of Tariff Structure on commercial basis.

Electricity is not a commodity . It is an utility service. This should not be regarded at par with other commodity. The socio-economic condition of the state as well as the whole country is such that more than 50% of the people live under below the poverty line. Hence to safe guard the interest of such poor consumers cognizable portion of cross subsidy is a must. Further Section 49(2) (d) of the Indian Electricity (Supply) Act 1948 clearly states that "The extension and cheapening of supplies of Electricity to sparsely developed areas" and U/S 49(3) of the same Act it is stated that "Nothing is the foregoing provisions of this section shall derogate from the power of the Board if it consider it necessary or expedient to fix different tariffs for the supply of Electricity to any person not being licensee .....", while it appears from the commission that the commission interprets the above principle of the Act of their own and violating the above principle decrease the cross subsidy in respect of the poor and small domestic consumers, commercial consumers and small industrial units while the price hike of the H. T. and big consumers is practically in the negative. We demand the review of the judgement and restore the cross subsidy and lower the price of Electricity instead of price hike.

**2.** That the allowance of 16.8% on T & D loss and reduction of T & D loss by the CESC at the rate of 0.7% for the next 4 years are highly objectionable on the following grounds :-

i) that the C. E. S. C. projected T & D losses at the rate of 22.36% out of which it is shown that 11.6% is due to technical loss and the rest of about 11% T & D loss towards commercial or non-technical loss which includes defective metering, defective billing, non-collection of dues and also pilferage (para 8.3 of the judgement). It is the case of the C. E. S. C. that such pilferage could be stopped only with the active support from the administration (para 8.3 of the judgement). Thus it appears that a part of T & D loss under sub head commercial loss is caused by theft while the commission on the plea of theft and pilferage allows 16.8% T & D loss to C. E. S. C. Ltd. How it can be ?

ii) In the year 1993 there was a ceiling of T & D loss for the C. E. S. C. at the rate of 14% with the direction of reducing it @ 1.5% per year. (para 8.5 of the judgement). Now the point is that if the reduction of 1.5% is maintained all the years for T & D loss since 1993 then it will godown to 10.5% (1.5% x 7 = 10.5% ) during 2000 and it will become the level of 3.5% (i.e. 14% - 10.5%).But hoe the commission allows C. E. S. C. 16.8% on T & D loss ?

iii) The C. E. S. C. did not place any supporting document for measuring pilferage or theft except a near statement of accounts even the commission also failed to provide any date on pilferage but on the plea of theft and pilferage the commission allows C. E. S. C. the T & D loss of 16.8%. While the punishment should be given to them who failed to stop pilferage and theft both on part of C. E. S. C. and on State Administration, it is surprisingly enough that the poor and honest consumers are punished by shouldering the burden of T & D loss in the ultimate result of tariff hike. Is it justified ?

iv) The majority area of C. E. S. C. is underground Cable System where the theft of electricity and pilferage is practically impossible while the area of supply of WBSEB is vast and throughout the state and the system of supply of electricity of WBSEB area is overhead the line where there is a possibility of theft and pilferage more than that of C. E. S. C. Then how the WBSEB to reduce T & D loss 2.5% per year whereas the commission directs the C. E. S. C. to reduce T & D loss to 0.7% per year overruling the previous direction of reducing the T & D loss at the rate 1.5% per year. Is it not a favoritism to the C. E. S. C. ? Is it not a bad instance ?

Hence, on the basis of the above reference grounds, we appeal to the commission to review the entire matter of T & D loss in respect of C. E. S. C. Ltd. And lower down the T & D loss to the rate of 7% to 8%.

**3.** That, at para 9.16 of the judgement it is argued that "The consultants have recommended for allowing a sum of Rs. 414 Lakh as claimed by the C. E. S. C. towards net shortfall in reasonable return as approved by the State Govt. The commission accepts this and allow Rs. 414 Lakhs as approved by the State Govt. like to make it clear that the commission has not gone into the merit of legality of this and hence this may not be taken and quoted as precedence. "How a commission acts in this way. This is a bad instant and this can be regarded as a pressure from the Govt. and the C. E. S. C. on the commission. Such allowance of Rs. 414 Lakhs to the C. E. S. C. on the above referred ground is not tenable and this is violation of the Section 29 of the Electric Regulatory Commission Act, 1998.

**4.** That, in para 6.2 of the judgement it is stated that, "Section 57 of the Electric Supply Act 1948 and also to the Schedule VI of the Act, Section 57 directs that the licensee are to relies charges of electricity from the consumers subject to the provision of Schedule VI and under clause I of the schedule a licensee is entitled to so adjust this charges for the sale of electricity whether by enhancing or reducing them that his clear profit in any year of Account does not exceed the amount of reasonable return. This clause is supplemented by a provision that such charges shall not be enhanced more than once in any year of accounts. On the other hand the low entitled the utility to enhance its tariff in such a manner that it's clear profit in any year of Accounts does not exceed the amount of reasonable return and under this clause, the licensee can be adjust it's tariff for every year of account subject to the above limitation on clear profit.

In para 10.2.2 of the judgement sheet it is stated that, " the utility shall adjust the sum to/from the consumers for 2000-2001 in the same percentage of sharing the total revenue/average tariff as stood on 31.3.2000 and we further direct that refund/realization is to be made from December, 2001 to March, 2002 in equal monthly installments and the amount are to be shown separately in the bills for information of the consumers ". In para 5.9 of the judgement it is stated that " The Commission is to safeguard the interest of the consumers and at the same time ask them to pay for the use of electricity in a reasonable manner based on the cost of supply of energy ".

From the above referred points of the judgement under para 6.2, 10.2.2 and 5.9 it is evident that the commission allows C. E. S. C. to collect the arrears of 20 months enhanced tariff in four equal installments. This is beyond the jurisdiction of the commission and violation of the Indian Electricity Act, 1998 and goes against the interest of the consumers.

Under Section 57 A(d) of the Indian Electricity (Supply) Act 1948 it is clear mentioned that, "..... An order in accordance therewith fixing the licensee's charges for the supply of electricity with effect from such dates, not earlier than two months or later than three months, after the date of publication of report as may be specified in the order and the licensee shall forth with give effect to such order ".

In the VI schedule of the E. S. Act 1948 it is stated, " provide that such (charges) shall not be enhanced more than once in any year of Account ". It appeared from a leading case Bhagwat Singh Vs M. B. Electric Supply, A I R Raj 72 at 77, " Inn accordance with the provision of the section, the effective date cannot be earlier than two months after the publication of the report. As the report was published on September 26, 1953, the new charge could not be effective earlier than two months thereafter so that the plaintiff will be liable to pay according to the realized rates after the expiry of the period of the two months from the date of publication of the report ".

Hence the collection of 20 months arrears goes against the law. This should be revised.

**5.** That, in para 17.2.2 of the judgement the commission has disallowed the fuel cost adjustment charge for the year 2000-2001 and direct C. E. S. C. to approach separately for fuel surcharge on the basis of the formula prepared by the commission if the cost of fuel elements enhanced during 2001-2002.

In your judgement you have clearly stated that fuel surcharge can not be taken permanently as levy. But the C. E. S. C has been collecting F. S. C. as a levy for the long past. But the C. E. S. C. have been collecting F. S. C. from 1993 to 31 st March, 2000 (when the old tariff will be ended) without showing how much was the actual enhanced cost of fuel and how much C. E. S. C. had taken a levy in the name of F. S. C. from the consumers from 1993 to 31 st March, 2000 ?

It is observed by the Supreme Court on the point of F. S. C. that, " the fuel surcharge that can only be for the purpose of recouping the amount actually paid by the board by way of fuel surcharge to the D. V. C. and the U. P. S. E. B. for the quantities of the energy purchased from those sources and the extra cost that the board has actually to incur on fuel consumed in generating stations ....."

Hence it can be stated that the F. S. C. cannot be taken as the levy . But the C. E. S. C. has been taking F. S. C. levy from 1993 to 31 st March, 2000 our appeal to the commission is to ascertain the F. S. C. levy from taken by the C. E. S. C. so long and how much it was related to the enhancement of the cost of fuel ? The excess taken by the C. E. S. C. in the name of F. S. C. since 1993 should be refunded to the consumers immediately.

Regarding the formula on F. S. C. as suggested by the commission, we will provide our points of objection and suggestion afterward.

**6.** That, in para 6.9 of the judgement it is stated that the objector has raised a point that the C. E. S. C. had no right to enhance unilaterally the security deposit of the consumer to three month's consumption. It was contended that the terms of existing contract not be changed by the one party to the contract without the consent of the other.

The commission on the basis of the C. E. S. C. 's is reliance on the case of Ferro Alloy's Corporation Vs A. P. S. E. B. as reported in A I R 1993 S C 2005 has expressed their views as, " In view of this finding of Apex Court, the point may not be agitated in this forum ".

In the above referred argument it is clear that the commission's view of taking three month's security deposit is in the affirmative.

In this connection we may refer the following portion of the judgement of the case referred above :- " It maybe that the Haryana Electricity Board has fixed period of Security Deposit equal to the amount of energy consumed for a period of two months, but that would depend upon the billing cycle adopted by the Haryana State Electricity Board ".

The Hon'ble commission has perhaps overlooked this portion of the Judgement of the Supreme Court in the same case reference.

In case of C. E. S. C. the billing system is monthly and hence the security deposit should be of one month and not three months.

What the law actually states ?

It is clearly stated in the Section 26 of the Indian Electricity Act 1910 that, " in absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase ".

Further it may be referred that the Supreme Court in Alpha Alloys Steels Pvt. Ltd. Vs. R. S. E. B. A. I R 1987 Raj 131 (A. K. Mathur J. ) expressed as follows :-

" The Board is a Public Utility Service and it can not become master. The claim of security deposit is for securing the payment of the Board is not powerless to secure that amount ..... the criterion of the Board that the highest consumption of the previous year should be a yard stick to enhance security deposit would amount to give a blanket power to the Board and that will cause great hardship to the consumer ".

On the basis of the above case law and the basic law of electricity it can be started that the C. E. S. C.'s proposal for three month's security deposit is not tenable. The commission is requested to review their decision in this regard.

**7.** That, In this para 6.10 of the judgement it is stated that, " In this regard however , the objector drew our attention to clause 12 (a) and 12 (b) of the conditions of supply stating that these were contrary to clause 14 of the model conditions of supply. In our view the model conditions were merely directory and the state government had a right under section 21 of the electricity Act 1910, to modify or alter any such conditions and such action would override the model condition. Thus, the objection in this regard is overruled ".

In this regard we appeal to the commission to review their decision referred above on the following grounds:-

i) U/S 21 of the Indian Electricity Act 1910 has also made some limitation of the power of the Govt. to give ascent to alter or amend the condition of supply by the licensee or board, provided that such change does not go against the existing Act or Rule. In the instant case the approval of the Govt. goes against the Clause 14 of the Indian Electricity Rule 1956.

ii) No Govt. can change or alter the existing procedure of provision of the Act/ Rule by the Administrative order. This requires the ascent of the legislature and the President of India.

iii) The following portion of the judgement of the Supreme Court also suggest that the security Deposit depends on the billing system. The billing system of the C. E. S. C. is monthly. Hence the Security Deposit should be of one month's not three months.

" In Ferror Alloys Corporation Lt Vs. A. P. S. E. B. A I R 1993 Sc 2005 at 2032 ) :-

" The Haryana Electricity Board has fixed the period security deposit equal to the amount of energy consumed for a period of two months but that would depend upon the billing cycle adopted by the Haryana State Electricity Board ".

**8.** That, in para 6.11 of the judgement it is started that, "It was also agitated that the C. E. S. C. was not legally entitled to charge from a new consumer in a particular premises the outstanding dues from an old consumer in the same premises. The C. E. S. C. proposed to justify it's action with reference to the provision of Section 49B as introduced by an amendment in 1994 and also relied on a decision of the Supreme Court in the case of Punam Chand Ranga Vs C. E. S. C. Ltd. as reported in 1994 (II) Calcutta High Court notes at para 4.

In para 6.12 of the judgement it is stated that, "For interpretation of Section 49B of the Electricity Act, we may read the section again. It clearly indicates that this provision relates to supply of electricity to industrial and commercial consumers and even the dues of the licensee could be recovered under this provision. But the procedure for realization either from the former or the subsequent owner of either from the premises is not through billing, but by an action under PDR Act. On this point, we only direct the C. E. S. C. to proceed according to law on the true interpretation of 49B and in the line with the decision of the High Court in Punam Chand Ranga case ".

In the connection we are to state that the fault of one consumer cannot be shifted to the other consumer by any means. This goes against the fundamental right of the consumer. Moreover this is against the Principal of Natural Justice. Moreover it is held by the Supreme Court that, "For grant of new connection to purchasers of industrial units, purchasers cannot be compelled to pay dues of previous owner for getting connection " . ( North East Fertilizers Pvt. Ltd. Vs. Bihar State E. B. 1995 Pat 33)

We demand review of it.

**9.** That, ninthly, it may be started that in your table you have admitted that there is some anomalies in the C. E. S. C. 's accounts for which you have disallowed some of the item's of the accounts and allowed some of the accounts merely because of the approval of the Govt.

Hence it is clear that is no proper accounts of C. E. S. C. it is manipulated. This account should be verified and the price hike on the basis of the incorrect account should be set aside.

**P R A Y E R S :-**

- i) Restore cross subsidy in favour of Lower Consuming Unit Consumers ;
- ii) Set-aside the Revised Tariff hike order ;
- iii) Set aside the order of collecting arrears enhanced price of electricity w. e. f. 1-4-2000 ;
- iv) Reduce the T & D loss @ 7% to 8% instead of 16% ;
- v) Direct C. E. S. C. to reduce the Rate of T & D loss 1.5% each year instead of 0.7% each year ;
- vi) Critically examine the C. E. S. C. 's Account and reduce the tariff accordingly ;
- vii) Direct C. E. S. C. to refund the money that has been taken by the C. E. S. C. from the consumer in excess since 1993 ;
- viii) Any other order as per objections ;
- ix) Direct C. E. S. C. to take security Deposit for one month only ;
- x) Dis allow C. E. S. C. to Rs. 414 Lakh in the name of short fall in reasonable return ;

[Click Here To View Order](#)

[Back to list of Petitions](#)